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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/071,465	02/08/2002	Laurent Philonenko	P5079	1048
24739 7590 10/30/2008 CENTRAL COAST PATENT AGENCY, INC 3 HANGAR WAY SUITE D WATSONVILLE, CA 95076				
EXAMINER				
MEINICKE DIAZ, SUSANNA M				
ART UNIT		PAPER NUMBER		
3692				
MAIL DATE		DELIVERY MODE		
10/30/2008		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/071,465

**Applicant(s)**

PHILONENKO, LAURENT

**Examiner**

Susanna M. Diaz

**Art Unit**

3692

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 10 September 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1 and 18 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1 and 18 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/CDC)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_
- Paper No(s)/Mail Date \_\_\_\_\_

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on September 10, 2008 has been entered.

Claims 1 and 18 are presented for examination.

### ***Response to Arguments***

2. Applicant's arguments with respect to claims 1 and 18 have been considered but are moot in view of the new ground(s) of rejection.

### ***Priority***

3. The validity of the claim of priority to application no. 09/127,284 as a continuation-in-part application is questioned since there is no common inventor. Grigory Shenkman is listed as the sole inventor of parent application no. 09/127,284 and Laurent Philonenko is listed as the sole inventor of the instant application.

Furthermore, the instantly claimed invention is not fully disclosed in the parent application; therefore, the currently presented claims will be granted a priority date of

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February 8, 2002 (i.e., the filing date of the instant application) for purposes of examination.

*Please correct the claim to priority accordingly since the instant application does not have at least one common inventor with the parent application, which is required to claim Continuation-in-Part status (see MPEP § 201.08).*

**Claim Rejections - 35 USC § 102**

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1 and 18 are rejected under 35 U.S.C. 102(b) as being anticipated by Walker et al. (U.S. Patent No. 6,088,444).

Walker discloses a quality of service (QoS) implementation system, comprising:

[Claim 1] a control node coupled to the system for receiving a session request from a client, for soliciting information directly from the client, and for retrieving transaction history associated with the client from a data storage (col. 3, lines 15-63); and

a processor for applying a formula using the solicited and the retrieved information to determine a profit potential for the session requested, and for selecting a quality of service option from more than one available option based on the determined profit potential (col. 3, line 45 through col. 4, line 8; col. 6, lines 29-43 -- Walker tracks customer transaction information and gives his more potentially profitable customers

priority in a call center queue based on the customer's transaction history. Higher priority/profitable customers receive better customer service, i.e., quality of service as based on one's assigned position in the call center queue, than lower priority/profitable customers. Each position in the call center queue is an available option. Also, averaging orders implies use of a formula. "For example, a customer who averages six orders of over \$100 each per year may have a higher status than a customer who averages one \$200 order per year...Each of the aforesaid methods of valuation equates to assigning an economic value to the call...").

Walker discloses a method for prioritizing quality of service implementation within a data network comprising steps of:

[Claim 18] (a) receiving session requests at a control node coupled to the data network from clients for communication sessions with agents of a hosting entity for prioritized quality of service implementation at a control point (col. 3, lines 15-63);

(b) soliciting client data provided directly by the client from the session requests (col. 3, lines 15-63);

(c) retrieving transaction history associated with the client from a data storage (col. 3, lines 15-63);

(d) matching obtained client data and transaction history data to customer resource management data (col. 3, lines 15-63); and

(e) providing a processor applying a formula using the data in step (d) for determining potential profit of the sessions and selecting the appropriate quality of

service options for the sessions based on results of the determination (col. 3, line 45 through col. 4, line 8; col. 6, lines 29-43 -- Walker tracks customer transaction information and gives his more potentially profitable customers priority in a call center queue based on the customer's transaction history. Higher priority/profitable customers receive better customer service, i.e., quality of service as based on one's assigned position in the call center queue, than lower priority/profitable customers. Each position in the call center queue is an available option. Also, averaging orders implies use of a formula. "For example, a customer who averages six orders of over \$100 each per year may have a higher status than a customer who averages one \$200 order per year...Each of the aforesaid methods of valuation equates to assigning an economic value to the call...").

### ***Conclusion***

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Susanna M. Diaz whose telephone number is (571) 272-6733. The examiner can normally be reached on Monday-Friday, 8 am - 4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kambiz Abdi can be reached on (571) 272-6702. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Susanna M. Diaz/  
Primary Examiner, Art Unit 3692